



PS
20/11/07

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Civil Revision No.133 of 2007

Applicants

1. Bhagirathi Sharma, son of Ramsharan Tiwari, aged about 52 years
2. Shantanu Prasad Sharma, son of Ramsharan Tiwari, aged about 58 years
3. Kanhaiyalal Sharma, son of Ramsharan Tiwari, aged about 56 years
4. Mannulal Sharma, son of Ramsharan Tiwari, aged about 42 years

All residents of Udebhata, Tahsil Janjgir,
District Janjgir-Champa

versus

Non-Applicants

1. General Public, who are having interest in this matter
2. Ravishankar Sharma, Son of B.G. Sharma, aged about 33 years, resident of Vidya Nagar, Bilaspur

Revision under Section 388(3) of the Indian Succession Act, 1925

Present : Applicants by Shri Rajeev Shrivastava, learned counsel.
Caveator/Non-Applicant No.2 by Shri Rajnish Singh Baghel, learned counsel.

ORAL ORDER

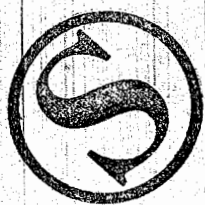
(Passed on 15th November, 2007)

Heard on I.A.No.2, an application for taking documents on record.

(2) The application is allowed. Documents are taken on record.

(3) Also heard on admission.

(4) The applicants are aggrieved by an order dated 27-10-2007 passed by the IInd Additional District Judge (F.T.C.), Janjgir in Miscellaneous Civil Appeal No.5/2007, whereby the order dated 03-12-2004 passed by the Civil Judge Class-I, Janjgir in Miscellaneous Civil Case No.20/1999, under Section 372 of the Indian Succession Act, 1925 (hereinafter referred to as 'the Act') granting a succession certificate in favour of non-applicant No.2 herein, was affirmed.



(5) Brief facts are that the applicants herein filed an application under Section 372 of the Act for grant of succession certificate for the money left by Rampyari, widow of late Vishwanath Sharma, who was the brother of the applicants. Non-applicant No.2 resisted the application on the ground that Rampyari had executed a Will in his favour on 05-09-1998 regarding her immovable and movable property. The said Will, Ex.D-1 was produced by non-applicant No.2 before the Court and besides other witnesses attesting witness Devi Chandrakar was also examined. The learned Civil Judge Class-I, Janjgir, after recording evidence of parties, held that non-applicant No.2 was having the best title to the money, i.e., the Bank accounts and G.P.F. account left by Rampyari since he had proved the execution of Will by Rampyari in his favour. Accordingly, rejecting the prayer of the applicants herein, the learned Civil Judge Class-I, Janjgir ordered issuance of a succession certificate in favour of non-applicant No.2 herein. Being aggrieved, the applicants herein preferred Miscellaneous Civil Appeal No.5/2007. The lower appellate Court also agreed with the finding recorded by the learned Civil Judge Class-I, Janjgir and dismissed the appeal. In this revision, the order dated 27-10-2007 passed by the IInd Additional District Judge (F.T.C.), Janjgir in Miscellaneous Civil Appeal No.5/2007 is under challenge.

(6) Shri Rajeev Shrivastava, learned counsel for the applicants has argued that the Courts below have committed jurisdictional error in deciding the question of grant of succession certificate in favour of non-applicant No.2 without there being a probate in his favour. In support of the argument, learned counsel for the applicants has relied on ***Vidhayaram @ Brajeshkumar Damodarprasad vs. Devlal Moolchand***, 1981 MPLJ 448 and ***Smt. Sarmishtha Devi Surve and others vs. Lal Saheb Surve and others***, AIR 1996 MP 13.



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(7) Having considered the submission, I have perused the order passed by the Civil Judge Class-I in Miscellaneous Civil Case No.20/1999 as also the impugned order passed by the IInd Additional District Judge in Miscellaneous Civil Appeal No.5/2007.

(8) Sections 57 and 213 of the Act are as under:

"57. Application of certain provisions of Part to a class of Wills made by Hindus, etc. – The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply–

(a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits; and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):

Provided that marriage shall not revoke any such Will or codicil."

"213. Right as executor or legatee when established. – (1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.



(61)

(2) This section shall not apply in the case of Wills made by Muhammadans or Indian Christians, and shall only apply—

- (i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and
- (ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the ordinary original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immoveable property situated within those limits."

(9) The case law cited by the learned counsel for the applicants does not help the applicants in any manner. A plain reading of Section 213(2)(i) of the Act leaves no room for any doubt that it applies only to a case falling under clauses (a) and (b) of Section 57 of the Act whereas the present case falls under clause (c) of Section 57 of the Act. Accordingly, as held in *Vidhayaram @ Brajeshkumar Damodarprasad vs. Devlal Moolchand* (supra), a person can, in case of a Will which does not fall within clause (a) or (b) of Section 57 of the Act, establish his right as a legatee in any Court without obtaining a probate. Where the Will has been duly proved and is found to be the last Will of the testator, obtaining probate is optional.

(10) The proceedings in Part X of the Act relating to succession certificates are of summary nature and a succession certificate may be



granted in favour of a person who appears to the Court as having *prima facie* the best title thereto. In the present case, non-applicant No.2 has not only filed the Will executed by Rampyari on 05-09-1998 before the trial Court, but in support thereof, has also examined the attesting witness and one Advocate Shri Ashok Dixit. I have perused the certified copies of the statements of witnesses filed with this civil revision. The evidence led by non-applicant No.2 *prima facie* constitutes legal proof of the factum of execution of the Will by Smt. Rampyari in favour of non-applicant No.2, who has rightly been held as *prima facie* having the best title to a succession certificate for the money left by Smt. Rampyari.

(11) I am of the considered opinion that no illegality or jurisdictional error has been committed by the Courts below in granting succession certificate in favour of non-applicant No.2. In view of the concurrent finding of fact and the scope of enquiry on an application for grant of succession certificate under Section 372 of the Act, being of a summary nature, no interference is called for in exercise of revisional jurisdiction. Accordingly, the civil revision is dismissed at the stage of admission.

(12) Consequently, I.A.No.1 for stay also stands dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge